

**BIGFORK LAND USE ADVISORY COMMITTEE**  
**Approved Minutes December 29, 2016**  
**4:00 PM Bethany Lutheran Church**

Chairwoman Johnson called the meeting to order at 4:15 p.m.

**Present:** Committee members Shelley Gonzales, Susan Johnson, Jim Bonser, Jerry Sorensen and Lou McGuire. There were 13 members of the public in attendance. Kari Nielsen and Mark Mussman from Planning and Zoning Department were present.

The agenda was adopted (m/s, Gonzales/McGuire, unanimous)

The minutes of the September 29, 2016 meeting were approved as corrected (m/s, McGuire/Bonser, unanimous)

**Administrator's Report and Announcements:**

Sign-in sheet with e-mail address for copy of draft minutes and draft minutes are posted on the County website: [flathead.mt.gov/planning\\_zoning/documents](http://flathead.mt.gov/planning_zoning/documents).

Public notices for the two seats open for election on May 2, 2017 and the appointment of the Member-at-Large and secretary have been filed with the Planning and Zoning Department. Applications for the elected positions must be filed with the Elections Department before February 6, 2017.

Member Gonzales reported that she previously inquired with the Planning & Zoning Department if they would be closed on January 2, 2017. Mary Fisher confirmed they would be closed. Gonzales stated that would give the Board of Adjustment (BOA) little time to read the minutes. Fisher stated that the BOA does not read the minutes. Gonzales stated that the community's input on applications is vital to the process and it is a disservice to all who attend Land Use meetings if the BOA does not read the minutes. Mark Mussman said he will be sure the BOA has the minutes and reads them before the January 3<sup>rd</sup> meeting. He gave Gonzales permission to email the minutes to the BOA members as soon as they are completed.

**Public Comment:**

None

**Applications:**

**FCU-16-18** – A request by Monica Harris and Lisa Gilbert for a conditional use permit to establish a "Camp and Retreat Center" on property located within the Bigfork Zoning District and zoned AG-20 Agricultural. The applicant intends to develop a camp and retreat center incorporating a wilderness retreat with agricultural themed educational outdoor activities and "artists in residence". The subject property is located at 500 Wild Swan Trail and contains approximately 20 acres. The property can legally be described as Tract 2AA in Section 36, Township 27 North, Range 19 West, P.M.M., Flathead County, Montana.

**Staff Report:**

Kari Nielsen presented the application.

Q. Sorensen: Explain the uses on the property? A. Over-night rentals are permitted. She then read all the permitted uses under the CUP.

Q. Bonser: Where is the detailed site map? The map provided is inadequate. What is the maximum number of guests that will be permitted on the property? A. Fifteen at any one time.

Q. Bonser: The staff report states multiple different numbers of guests on the property at any one time.

A. Mussman: Condition #4 in the staff report limits guest to 15 on the property at any one time.

Q. Bonser: Would WOOFER program increase the number of people on the property? A. Mussman: Ask the applicant to clarify but in AG-20 people can sell goods on their property.

### **Applicant Report:**

Lisa Gilbert presented a brochure on their business. She stated the website information is outdated. Monica Harris clarified the co-op activity as not bringing people onto the property. Monica gave a history of the ownership of the residential area.

Bonser spoke to review the activities proposed by the applicants,. Monica questioned the prior owner's activity. She stated that she will be giving people a chance to "unplug" from their busy lives. Gonzales spoke to the history of usage on the property by the prior owner which was in violation of zoning laws.

Monica stated that there are 3 structures on the property and they felt they were ok for rentals and established a VROB (Vacation Rental By Owner). She questioned the validity of the rental rules established by the County. She stated that they could permanently rent out the 2 houses but they want peace and quiet on their retirement land. Regarding the traffic on the private road, she said normal traffic is the threat, not their business. Regarding the impact on the wetlands, Wendy Jacobs of the Environmental Department found three septic systems on the property and she had no issue with the wetlands. Monica reviewed AG-20 permitted uses without a CUP.

Monica discussed seasonal retreat rentals will be no more than 15 people per day and she wants to limit commercial events to 4 times a year.

Q. Sorensen: A 4 event limit is not stated in the application. A. That is our intent.

Monica discussed the easement issues and questioned the letter submitted by the attorney for the adjacent property owner, Cliff Palmer. Monica inquired as to the possibility to look further into the easement issue. Sorensen responded that the easement right issues were critical to this application.

Q. Bonser: Who would widen the road into your property. A. Monica: We would if we were required to do so. Bonser replied: But there are spots that cannot be widened past 18 feet. Monica replied: She does not want to widen the road to 2-way traffic for esthetics reasons.

Bonser stated that people often do not behave normally when on vacation. Monica replied that no one has complained over the past three years when the property was used for rental purposes.

Q. Bonser: Have you paid taxes on your rental business? A. Yes

Q. Sorensen: Is land to the east state land? A. Yes.

Q. Johnson: Do you live on the property full time? A. Yes.

Q. Johnson: Is the "Tree House" a rental? A. Yes, for the past 3 years. The guest house has been a rental for 1 year.

Monica stated that there is adequate parking on the property in front of the "Retreat" building. They intend to purchase a pump and access the pond for fire suppression.

### **Public Agencies:**

None

Bonser commented on wetland issues and asked Mussman if he had any problems with the wetlands on the applicants' and adjacent properties. Mussman replied that these are non-jurisdictional wetlands and it does not appear there are any activities in the wetlands.

**Public Comment:**

Chany Ockert: Stated she is a 4 generation Montanan and sees increased adversarial situations between instate and out of state residents. She asked if a mediation could occur before this application goes forward.

Brenda and Carlos Luna: Grandfather was original property owner of 160 acres. Their concerns are: Julian Lane goes through their property; people wandering around on their property; encroachment on their property by the applicants' business.

Cliff Palmer: Is an adjacent property owner to the south of the applicants. Concerned about noise which carries onto their property due to a lack of screening, barking dogs, change in the culture of the neighborhood with a business operation. Cited significant increase in traffic, the scope and volume of the business is too much for the property, the noise, and the devaluation of property values.

Q. Bonser: Do all the property owners pay for the road maintenance? A. Palmer: It is loosely managed.

Q. Bonser: Did you have the same problems with the prior owner? A. Yes, we filed a complaint with the county.

Craig Wagner: Stated he was on the BOA for 5 years and he has prior history with these types of operations and their related complaints. He questioned if the applicants will have on site medical, CPR certified staff, and questioned the adequacy of the waste water system for the number of potential guests. He cited Finding of Fact #2 as a public danger.

Johnna Hyatt: For her horse property she has rebuilt fencing and added an emergency road to aide adjacent property owners for emergency use. She has trespassing issues with people on her property trying to find the applicants' business.

Sue Hollingsworth: Is a neighbor to the north of the applicants. She has issues with noise, barking dogs, increased traffic, and applicants' guests trespassing.

Cheryl Palmer: Showed a picture of the wetlands and creeks (Peterson and Patterson) which flow into the Swan River. She stated the "Retreat Center" is in the wetlands and there is a mosquito problem there. She stated that the Army Corps of Engineering states that buildings should be 130 feet from wetlands. She questions the applicants' willingness to comply with zoning regulations and believes all the applicants want to do is vacation rentals.

Carolina Cotman: Stated that the zoning uses allow more nuisances than what the applicants are proposing. The applicants' proposal considers everyone's concerns. The applicant seems to be willing to address the concerns of the neighbors.

Lance Morgan: He refuted the comments of Carolina Cotman that the zoning usages are less of a nuisance. The problem is that the proposal is for a commercial enterprise in a residential area. A 30-day rental requirement is the current law. Do not allow an end run around the regulation if it is an inconvenience to the applicants.

Mark Mussman restated the options for rentals in AG-20, citing the CUP.

Fred Hodgeboom: Stated he has a background in forestry and riparian management and he spoke to the wetlands on the applicants' and Palmer's properties. He is concerned about the septic systems in a high-

water table area. Questioned whether the septic systems would prevent pollution of the water that flows into the Swan River. Cited fire safety as there is good fuel potential in the area.

Ken Kalvig: Stated he is an attorney representing the Palmers. He stated the application has a lot of problems, especially the easement issues which are complicated and difficult to sort out. It is the applicants' responsibility to show they have legal access to the property for the applied use. The applicants want to operate a VRBO and is using is "Camp Retreat" designation to allow short-term rentals. He further stated that the alternative uses proposed on the property were irrelevant and the CUP criteria must be addressed. Further, if people followed the rules there would be no problems and the county cannot mandate dust control on a private property easement. (Condition #15).

**Staff Response:**

None

**Applicant Response:**

Lisa stated they intend to put more vegetation and mature trees between their property and the Palmer's property. She stated that their business only adds 2 cars for rentals, 7 cars for retreat activities and there is ample parking. Regarding their barking dogs, they were obtained to keep wildlife away from their chickens and goats and she stated she hears dogs barking from her neighbors' property. She stated that the Ferndale Fire Department feels the access to their property is safe.

Monica restated that she had reviewed the zoning policies. She restated her vision of a "Camp and Retreat". She thinks the Palmers are ok with their 2 day rentals. Further, there will be no cooks or staff on the property, there is no longer a mosquito problem and she apologized for the barking dogs.

**BLUAC Committee Action:**

Discussion: The committee reviewed the 13 Findings of Facts (FOF). Regarding FOF #2, Sorensen stated that the road must be widened to 2 lanes and the widening of the road by the applicant cannot occur without the consent of the property owners.

FOF #3: Amended and replaced with the following: The subject property appears unsuitable for the camp and retreat center because wetlands and high ground water do exist on the property.

FOF #4: Amended and replaced with the following: The proposed parking scheme appears to be inadequately designed because there is no parking scheme or identification of the septic drain fields.

FOF#8: Amended and replaced with the following: The requirements for waste water treatment and water for the camp and retreat center may not be acceptable with Flathead County Environmental Health.

FOF#12: Amended and replaced with the following: The proposed use had the potential to impact the surrounding neighborhood negatively because of potentially inappropriate hours of operation.

Findings of Facts: Johnson called for a motion to approve the 13 Findings of Facts, as amended. Moved and seconded Sorensen/McGuire, approved unanimously.

Motion on Application: Johnson called for motion to forward a recommendation to the Board of Adjustment. Sorensen moved to forward a recommendation to deny the application, second by McGuire.

Discussion: Gonzales cited the Bigfork Neighborhood Plan as the guiding document for growth and development in Bigfork, specifically to protect the character of the area and resource quality and wildlife habitat (Policy 2.1), support economic development but not to the detriment of the quiet enjoyment of the

residents of the Bigfork Planning Area (Policy 2.2), and, commercial activities should minimize their adverse impact on residential neighborhoods (Policy 12.3)

Vote on Application: Johnson called for the vote. The committee forwarded to the BOA a unanimous recommendation to deny the application.

**Old Business:**

None

**New Business:**

None

**Adjourn:**

Meeting was adjourned at 7:45 p.m.

Respectfully submitted,

Shelley Gonzales, Acting Secretary